IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 19898 of 2007(R)

AGAINST THE ORDER IN IA 1047/2007 IN
OS.299/2002 of III ADDL.SUB COURT, KOZHIKODE

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PETITIONER:

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1. ABDUL MAJEED, AGED 45 YEARS,
   S/O. ABDUL RAHIMANKUTTY HAJI, KALATHINGAL HOUSE,
   FEROKE AMSOM NALLUR DESOM, KOZHIKODE, REP.BY HIS
   P.A.HOLDER,KALTHINGAL MAMMUKOYA, S/O LATE
   ABDURAHIMAN KUTTY HAJI,AGED 59, KALATHINGAL HOUSE,
   FEROKE AMSOM AND NALLUR DESOM, KOZHIKODE.

2. MUHAZINA, D/O. ABDUL MAJEED,
   AGED 20 YEARS, KALATHINGAL HOUSE, FEROKE AMSOM
   AND NALLUR DESOM, KOZHIKODE.

BY ADV. SRI.K.M.FIROZ

RESPONDENTS:

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1. SHIHAB RAHIMAN, AGED 20 YEARS,
   S/O. UMMER, RESIDING AT VELIPRAM AMSOM NEREMKALLAI
   DESOM OF KOZHIKODE TALUK.

2. SHIFANA, AGED 19 YEARS,
   D/O. UMMER, RESIDING AT VELIPRAM AMSOM NEREMKALLAI
   DESOM OF KOZHIKODE TALUK.

3. K.UMMER, AGED 55 YEARS,
   RESIDING AT VELIPRAM AMSOM KARINKALLAI DESOM OF
   KOZHIKODE TALUK. (AGE SHOWN IN THE IMPUGNED ORDER
   IS NOT CORRECT).

4. BUSHRA, AGED 34 YEARS,
   RESIDING AT NALLUR AMSOM AND DESOM OF KOZHIKODE
   TALUK.

5. ABDUL RAHIMAN, AGED 28 YEARS,
   RESIDING AT NALLUR AMSOM AND DESOM OF KOZHIKODE
   TALUK.

6. KUNHEEVI, D/O. MOHAMMED ALI,
RESIDING AT NALLUR AMSOM AND DESOM OF KOZHIKODE TALUK.

7. ABDUL MANAF, AGED 25 YEARS,
S/O. MAMUKOYA, RESIDING AT NALLUR AMSOM AND DESOM OF KOZHIKODE TALUK.

8. HABEEB RAHIMAN, AGED 25 YEARS,
RESIDING AT NALLUR AMSOM AND DESOM OF KOZHIKODE TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.19898 OF 2007 R

Dated this the 28th June, 2007.

JUDGMENT

This writ petition is filed challenging the order of the Subordinate Judges Court, Kozhikode in I.A.1047/07 and 1740/07. I.A.1047/07 is for receiving an additional witness list and I.A.1740/07 is for adjournment of the case. Now the challenge is confined to the order in I.A.1047/07. Learned counsel for the writ petitioner submits that the suit is filed by minors to set aside the document executed by their father as guardian. There was no prayer to set aside the document at the time of the institution of the suit, but after the evidence was closed an amendment application was filed to set aside the documents. It was allowed, plaint was amended and additional written statement had been filed. After the incorporation of the new prayer to set aside the document the contesting defendant wants to adduce evidence by examining first writ petitioner's wife, Noorjahan. When an amendment has taken effect contending that the document is liable to be set aside and when the defendant feels that evidence has to be let in to counter against the allegations in the plaint it is only just and equitable that the additional witness sought to be examined be

permitted so that unnecessary allegation of shutting out evidence will not arise later. Therefore the writ petition is allowed and the order in I.A.1047/07 is set aside and the learned Subordinate Judge is directed to permit the writ petitioners to examine Noorjahan as their witness. It is made clear that the writ petitioners have to co-operate with the court for examining Noorjahan as expeditiously as possible.

M.N.KRISHNAN
Judge

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